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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 222

STATE OF MISSOURI AT THE RELATION OF MISSOURI INSURANCE COMPANY, APPELLANT,

vs.

FREDERICK GEHNER, AS ASSESSOR OF THE CITY OF ST. LOUIS AND AS PRESIDENT OF THE BOARD OF EQUALIZATION OF THE CITY OF ST. LOUIS, ET AL., ETC.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI

FILED JULY 8, 1929

(34,353)

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[fol. 1] [Caption omitted]

IN SUPREME COURT OF MISSOURI

APRIL TERM, 1926

STATE OF MISSOURI at the Relation of MISSOURI INSURANCE COMPANY, a Corporation, Relator,

vs.

FREDERICK GEHNER, as Assessor of the City of St. Louis and as President of the Board of Equalization of the City of St. Louis; A. R. Schollmeyer, Clyde Carson, William L. Heckmann, and Joseph J. Lichtenfeld, as Members of the Board of Equalization of the City of St. Louis, Respondents

NOTICE OF APPLICATION FOR WRIT OF CERTIORARI

To the Honorable Frederick Gehner, as assessor of the City of St. Louis and as President of the Board of [fol. 2] Equalization of said city, and to A. R. Schollmeyer, Clyde Carson, William L. Heckmann, and Joseph J. Lichtenfeld, as members of the Board of Equalization of said city:

You are hereby notified that the undersigned will file in the Supreme Court of the State of Missouri at Jefferson City, Missouri, on the 23rd day of September, 1926, at 9:00 o'clock a. m., its application for a writ of certiorari and suggestions in support thereof, copies of which application and suggestions are hereto attached and made a part of this notice.

You are further notified that said application will be presented to said Court at said time, or as soon thereafter as the Court can hear the same.

Dated this 16th day of September, 1926.

Missouri Insurance Company, Relator, by Jones, Hocker, Sullivan & Angert, Its Counsel.

Received a copy of the foregoing notice and exhibits thereto attached this 16th day of September, 1926.

(Signed) Oliver Senti, Attorney for Respondents.

IN SUPREME COURT OF MISSOURI

[Title omitted]

[fol. 3] APPLICATION FOR WRIT OF CERTIORARI—Filed Sept. 17, 1926

To the Honorable Judges of the Supreme Court of Missouri:

Your petitioner, Missouri Insurance Company, relator herein, respectfully shows to the Court:

1. That the relator, Missouri Insurance Company, is and was at all times herein mentioned a corporation organized and existing under the laws of the State of Missouri pertaining to the formation of life and accident insurance companies, and engaged in the business of writing insurance upon the lives of individuals in Missouri and elsewhere.

2. That Frederick Gehner is now, and has been since the 24th day of April, 1925, the duly elected, qualified and acting Assessor of the City of St. Louis, Missouri, and as such, head of the Assessment Division established by the Charter of said City, and President of the Board of Equalization of said city, and that A. R. Schollmeyer, Clyde Carson, William L. Heckmann and Joseph J. Lichtenfeld, with the said Frederick Gehner, during the year 1926, composed the Board of Equalization of said City by due appointment of the Mayor thereof.

3. That the said Frederick Gehner, as such Assessor and as President of the Board of Equalization, as aforesaid, is the official custodian of all the records, documents and files of the Assessor's office of the city of St. Louis and also of the Board of Equalization of said City.

4. That subsequent to June 1, 1925, and as of date June 1, 1925, as required by law, the relator made return in due form to the Assessor of the City of St. Louis, aforesaid, of all of its property for taxation; that in said return and as a basis for arriving at the taxable value of its property the [fol. 4] relator set down its personal property as follows, to-wit:

Money deposited in bank or other safe place	$5,265.33
Bonds, whether State, County, Town, City, Township, incorporated or unincorporated companies of the value of	349,000.00
Total personal assets subject to taxation in the State of Missouri	$354,265.33

5. That relator's said return also showed deductions claimed by it under the provisions of Revised Statutes of Missouri, 1919, Section 6386, as follows:

Amount of legally required reserve necessary to reinsure its outstanding risks on June 1, 1925, deposited with the State of Missouri for the protection of policyholders	$326,522.69
Amount of unpaid policy claims June 1, 1925	6,964.00
Total deductions	$333,486.69

That on said return and the facts as the same existed after making said deductions the net amount of relator's personal property subject to taxation on June 1, 1925, was Twenty Thousand Seven Hundred Seventy-eight Dollars and Sixty-four cents ($20,778.64), and the relator states that said return was and is true and correct.

6. That notwithstanding the aforesaid facts, the respondents, acting as the Board of Equalization of the City of St. Louis, Missouri, did, on March 31, 1926, duly notify the relator of their intention to assess the relator for taxes for the year 1926 on personal property as follows:

Cash deposited in bank or other safe place	$5,260.00
Solvent bonds	349,000.00

and by said notice, required the relator to appear before said Board at a time stated, and show cause why such assessment should not be made.

That thereafter, in conformity to said notice, the relator, [fol. 5] by its officers and attorneys, appeared before said Board and a hearing was had under said notice, and evi-

dence duly heard and considered by the Board; that after hearing the evidence and the objections to the proposed assessment by the relator, said Board made its findings under the evidence that the total amount of the assets of the relator, to-wit, Three Hundred Fifty-four Thousand Two Hundred Sixty-five Dollars and Thirty-three cents ($354,265.33), as listed in said return, was correct, and that the amount of the legally required reserve of relator, on June 1, 1925, was Three Hundred Twenty-six Thousand Five Hundred Twenty-two dollars and Sixty-nine Cents ($326,522.69) and its unpaid policy claims on said date, Six Thousand Nine Hundred Sixty-four Dollars ($6,964.00); that said Board also found and determined that notwithstanding such legally required reserve and unpaid policy claims, the assets listed were subject to taxation in proportion to their value, and that the relator was not entitled to deduct therefrom the amount of said legally required reserve and unpaid policy claims; that thereupon, on April 10, 1926, said Board duly entered its finding and order assessing the relator without regard to such deductions, and fixed the total amount of personal property owned or held by the relator on June 1, 1925, at Fifty Thousand Dollars ($50,000.00), to which action the relator duly entered its protest, and such protest was made a part of the records of said Board.

7. The relator further states that the attempted assessment by said Board of Equalization of the City of St. Louis against the relator, as aforesaid, is without warrant of law and is void; that unless such assessment and the records thereof be quashed, set aside and for naught held, the Assessor of the City of St. Louis will include the same in the assessment roll against the relator and taxes will be levied and tax bills will, in due course, issue thereon against the relator for the payment by the relator of taxes based on [fols. 6-9] said illegal and void assessment, by reason of which facts the relator has no adequate ordinary remedy at law.

Wherefore, in consideration of said facts, the relator prays that a writ of certiorari may issue herein, directed to the said Frederick Gehner, Assessor of the City of St. Louis and President of the Board of Equalization thereof,

demanding him to certify to this Court a true, perfect and complete copy of (1) the return for taxation made by the relator as of June 1, 1925, to the said Frederick Gehner as Assessor of the City of St. Louis; (2) the Assessment made and entered by said Board of Equalization of the City of St. Louis upon its records under date of April 10, 1926, assessing the relator for taxation for the year 1926; and (3) the complete record of said Board and of said Assessor's office of the City of St. Louis respecting said assessment against the relator; and that upon being so possessed of the records aforesaid, this Court will be pleased to order and adjudge that the action of the Board of Equalization of the City of St. Louis, as aforesaid, in assessing against the relator on its assets, without allowing deductions for its legally required reserve and unpaid policy claims be set aside and for naught held, and for such other and further relief as to the Court may seem meet and proper in the premises.

(Signed) Jones, Hocker, Sullivan & Angert, Attorneys for Relator.

Duly sworn to by H. G. Alewel. Jurat omitted in printing.

[fol. 10] IN SUPREME COURT OF MISSOURI

[Title omitted]

WRIT OF CERTIORARI AND MARSHAL'S RETURN

The State of Missouri to Frederick Gehner, as Assessor of the City of St. Louis and as President of the Board of Equalization of the City of St. Louis, and A. R. Schollmeyer, Clyde Carson, William L. Heckmann, and Joseph J. Lichtenfeld, as members of the Board of Equalization of the City of St. Louis, Missouri, Greeting:

Whereas it has been represented to the Supreme Court of the State of Missouri, on the part of the Missouri Insurance Company, as indicated and set forth in a certain petition for a writ of certiorari, a copy of which is hereto attached and made a part hereof; and we being willing to maintain the rights of the State of Missouri and the laws and customs thereof:

Now, therefore, it is ordered and commanded by the Court here that you, the said Frederick Gehner, as Assessor of the City of St. Louis and President of the Board of [fol. 11] Equalization thereof, do certify to this court on or before the 29th day of October, 1926, a true, perfect and complete copy of (1) the return for taxation made by the relator as of June 1, 1925, to the said Frederick Gehner, as assessor of the City of St. Louis; (2) the assessment made and entered by said Board of Equalization of the City of St. Louis upon its records under date of April 10, 1926, assessing the relator for taxation for the year 1926; and (3) the complete record of said Board and of said assessor's office of the City of St. Louis respecting said assessment against relator, in order that this court may adjudicate upon the regularity of said proceeedings and pass judgment upon the legality of your action, without allowing deductions for its legally required reserve and unpaid policy claims; and you are Commanded, in the meantime, to take no further steps in said matter until the further order of this court. Herein fail not at your peril and have you then and there this writ.

In testimony whereof I hereunto set my hand and affix the seal of said Supreme Court, at my office in the City of Jefferson, this 29th day of September, 1926.

J. D. Allen, Clerk.(Seal.)

The return and service shown on the back of said writ is in words and figures following, to-wit:

The undersigned, City Counselor, within and for the City of St. Louis, Mo., hereby accept service of the within Writ of Certiorari for all of the within named respondents.

Dated at St. Louis, Mo., this — day of October, 1926.

Julius T. Muench, by Oliver Senti.

[fol. 12] State of Missouri, ss:

Supreme Court

Executed the within Writ of Certiorari in the City of St. Louis, State of Missouri, on the 9th day of October, 1926, by delivering a true copy of the within writ and petition for the within named Frederick Gehner, as Assessor of the City of St. Louis and as President of the Board of Equalization of the City of St. Louis, and by delivering a

true copy of the within writ for the within named A. R. Schollmeyer, Clyde Carson, William L. Heckmann and Joseph J. Lichtenfeld as members of the Board of Equalization, to Julius T. Muench, City Counselor, who accepted service in writing for all of the within named respondents.

Given under my hand this 9th day of October 1926.

H. C. Schult, Marshal of the Supreme Court of Missouri.

IN SUPREME COURT OF MISSOURI, EN BANC

[Title omitted]

STIPULATED RECORD—Filed Dec. 12, 1928

Now, at this day, come the relator and respondents, by their respective counsel, and stipulate and agree that for the purpose of this cause the record therein may be taken as follows:

[fol. 13] (1) That the relator, Missouri Insurance Company, a corporation, is a domestic insurance company organized under the laws of the State of Missouri, having its principal office in the City of St. Louis, Missouri; that within the time provided by law there was served upon the relator by a Deputy Assessor of the City of St. Louis, State of Missouri, a printed blank form of return for the return of assessable property of relator as of June 1, 1925, as a basis for the assessment of taxes for the year 1926, and that upon said form, within the time required by law, the relator, by H. G. Alewel, its Secretary, made a return, the pertinent parts of which so far as this controversy is concerned, are as follows:

Return

Missouri Insurance Company, St. Louis, Missouri

December 8th, 1925.

Assets, Real Estate, Improvement, etc.	$142,000.00
Bonds, Municipals	289,000 00
Bonds, Government	94,000.00
Bonds, Mortgages	60,000.00
Cash	5,265.33
	$590,265.33

Reserve

Standard Table of Mortality with 3½% interest	$263,000.00
Unearned Premium, 50% Casualty	10,225.58
Reserve for Disability Sick claims	50,000.00
Reserve for Assessment Policies	3,297.11
	$326,522.69

Missouri Insurance Company, St. Louis, Missouri

December 8th, 1925.

The net value of all other assets or values of the Missouri Insurance Company, in excess of the legally required reserve necessary to reinsure its policies and in excess of unpaid policy claims is		$30,778.64
Total Assets		$590,265.33
Less Real Estate assessed as above and on which the Company pays taxes	$142,000.00	
Less reserve required by law	326,522.69	
Less U. S. Government Bonds	94,000.00	
[fol. 14] Less Deposits and assets in other states	0.00	
Less Unpaid Policy claims, sick	5,143.00	
Less Unpaid Policy claims, death	1,821.00	
		$569,486.69
		$30,778.64

(Signed) H. G. Alewel, Secretary Missouri Insurance Company. (Seal.)

Subscribed and sworn to before me this 8th day of December, 1925. (Signed) Clara E. Adelsberger, Notary Public, City of St. Louis, State of Missouri. My term expires Nov. 22, 1926.

(2) That thereafter on April 1, 1926, the Board of Equalization of the City of St. Louis, by its Secretary, Ralph J.

Panzier, caused to be served upon the relator a notice that such Board proposed to assess relator on said return for taxes on personal property as follows: Cash deposited in bank or other safe place, $5,260.00; solvent bonds, $349,000.00, and requiring the relator to appear before said Board on April 6, 1926, at 10:00 o'clock A. M.; that thereafter, pursuant to said notice, the relator appeared before said Board and protested the assessment of any of its property in excess of the sum of $30,778.64, the amount of taxable personal property shown by its said return as having been owned by said relator on June 1, 1925; that the objections and protests of relator were heard by said Board on said 6th day of April, 1926, and the matter of such assessment taken under advisement by said Board; that thereafter, on April 10th, 1926, said Board made its finding and assessment against relator, as shown by the entry of record in the official proceedings of said Board, which record is as follows:

STATE OF MISSOURI,
City of St. Louis, ss:

April 10, 1926.

[fol. 15] In the Matter of the Assessment of the MISSOURI INSURANCE COMPANY

On the 6th day of April, 1926, at ten o'clock A. M., the matter of the assessment as of June 1, 1925, for general taxes for the year 1926, against the Missouri Insurance Company, came on for hearing on the citation issued by this Board to the said Missouri Insurance Company dated, March 31, 1926, which citation is in words and figures as follows:

Personal Property

BEFORE THE BOARD OF EQUALIZATION OF THE CITY OF ST. LOUIS

St. Louis, March 31, 1926.

Missouri Insurance Company, Mr. H. G. Alewell, Secretary,

Olive St. and Vendeventer Ave., City.

GENTLEMEN: You are hereby notified that the Board of Equalization of the City of St. Louis, in session convened in

the office of the Assessor of the Revenue, Rooms, 114-5-7 City Hall, has proposed to assess you for the taxes of 1926 on personal property, as follows, to-wit: Cash deposited in bank or other safe place, $5,260.00; solvent bonds, whether state, county, town, city, township, incorporated or unincorporated companies, $349,000.00.

You are further notified that if you wish to take exception to the proposed action of the said Board, you may appear before this body on the 6th day of April, 1926, at 10:00 o'clock A. M.

Respectfully, Ralph J. Panzier, Secretary.

Served the within citation on H. G. Alewell, Secretary of the Missouri Insurance Company, by delivering to him a true copy thereof.

S. J. Lane, Deputy Marshal.
April 1st, 1926.

The Missouri Insurance Company was represented by Mr. Ralph T. Finley, its attorney, and evidence having been heard and considered by the Board, the matter was taken under advisement by the Board, and the further consideration of the matter was continued until this date.

And now the Board being fully advised in regard to the matter, makes its finding and order as follows:

The Board finds and determines from the evidence that the Missouri Insurance Company is, and at all the times hereinafter mentioned was an insurance company organized and existing under the laws of the State of Missouri, having its principal office and place of business in the City of St. Louis, Missouri; that a blank form for tax return for state, city and school taxes for the year 1926 was duly served by the Assessor of the City of St. Louis, Missouri, upon said Missouri Insurance Company, and that said company, in due and proper time, prepared and attached to [fol. 16] said blank, and delivered to the Assessor of the City of St. Louis, under oath, its tax return or list, which said tax return or list set forth the value of its real estate as of June 1, 1925, as $142,000.00, and the gross value of its assets other than real estate at $448,265.33.

The Board further finds that on June 1, 1925, said Missouri Insurance Company had money deposited in bank

or other safe place in the amount of $5,265.33, and solvent bonds, whether State, county, town, city, township, incorporated or unincorporated companies, valued by it at $349,000.00; and that the remaining assets of the said company owned or held by it on said date are not taxable because of their nature or because of their location outside of the State.

The Board further finds that the said Missouri Insurance Company has claimed, in its return for taxation, and still claims, that under the provisions of Section 6386 of the Revised Statutes of Missouri, 1919, it is entitled to deduct from its taxable assets its legally required reserve necessary to reinsure its outstanding risks and any unpaid policy claims as of June 1, 1925, and that the amount of these deductions is $326,522.69 on account of its legally required reserve, and $6,964.00 on account of unpaid policy claims, and that the net value of its property subject to taxation in excess of its legally required reserve and any unpaid policy claims is $30,778.64.

The Board further finds that the legally required reserve of the Missouri Insurance Company, on June 1, 1925, did in fact amount to $326,522.69, and that its unpaid policy claims did in fact amount to $6,964.00.

The Board rejects the claim of the said Missouri Insurance Company to deduct its legally required reserve aforesaid and its unpaid policy claims aforesaid because, under the provisions of Section 12775 of the Revised Statutes of Missouri, 1919, the property of the said Company is subject to taxation unreservedly, and the Constitution and laws of Missouri require that all property subject to taxation shall be taxed in proportion to its value.

This Board is advised by the City Counselor of the City of St. Louis that Section 6386 of the Revised Statutes of Missouri, 1919, upon which the said Missouri Insurance Company bases its estimate of its taxable property, is in conflict with Section 4 of Article X of the Constitution of Missouri, and is null and void.

The Board further finds that the said Missouri Insurance Company, on June 1, 1925, owned or held in the State of Missouri, money deposited in bank or other safe place, amounting to $5,265.33, and solvent bonds, whether State,

county, town, city, township, incorporated or unincorporated companies, which the Board values at $44,750.00.

Accordingly, the Board of Equalization of the City of St. Louis, on the motion of Mr. Schollmeyer, seconded by Mr. Luechtefeld, and unanimously adopted, hereby assessed the money deposited in bank or other safe place of the said Missouri Insurance Company for the taxes of 1926, at $5,250.00, and solvent bonds, whether State, County, town, city, township, incorporated or unincorporated companies, at $44,750.00, and fixes the total assessment of personal property owned or held by the said Missouri Insurance Company, on June 1, 1925, at $50,000.00.

The said Missouri Insurance Company, having entered its protest, through its attorneys, to the action of the Board [fol. 17] in making the assessment of its property as aforesaid for the taxes of 1926, without allowing any deduction on account of its legally required reserve necessary to reinsure its outstanding risks or on account of any unpaid policy claims, it is hereby ordered that its protest be made part of this record.

(3) In view of the difference between the facts in this case and those in the other cases recently pending before the Court, notwithstanding the former stipulation herein, the parties now agree that this cause may be submitted to the Court upon the pleadings and the record as herein stipulated.

Dated this 7th day of December, 1928.

(Signed) Jones, Hocker, Sullivan & Angert, Ralph T. Finley, Attorneys for Relator. Julius T. Muench, City Counselor; Oliver Senti, Associate City Counsellor, Attorneys for Respondent.

[fol. 18] In Supreme Court of Missouri, en Banc

[Title omitted]

Abstract of Record for Relator—Filed Dec. 24, 1928

This is an original proceeding by certiorari. After due notice thereof to the respondents, the relator filed its peti-

tion for a writ of certiorari in this court on September 17, 1926. The respondents are Frederick Gehner, as Assessor of the City of St. Louis and President of the Board of [fol. 19] Equalization of the City of St. Louis, and other members of the Board of Equalization of said City.

A writ of certiorari was granted by this Court on September 29, 1926.

The relator's petition or application for a writ of certiorari is as follows:

[fols. 20-23] Petition for writ of certiorari omitted; printed side page 2 ante.

[fol. 24] And thereafter, in lieu of a formal return by the respondents herein, the parties, by their respective attorneys, have entered into the following stipulation as to the facts and record in the case (omitting capition):

[fols. 25-30] Stipulated record omitted; printed side page 12 ante.

[fol. 31] And thereafter, the relator filed its motion for a judgment quashing the record of the respondents herein, which motion (omitting caption) is as follows:

[fol. 32] Motion for Judgment Quashing Record

Now comes the relator and moves the Court to quash the record of the Assessor of the City of St. Louis and the Board of Equalization of said city, shown by the stipulated record in this cause, and for grounds of said motion states:

1. That the assessment and proposed tax against the relator herein is unauthorized by law.

2. That upon the face of the record in determining the amount of relator's assessable property the respondents erroneously failed to allow deductions for the amount of the legally required reserve necessary to reinsure the relator's outstanding risks and unpaid death claims as of June 1, 1925.

3. That the respondents erroneously acted on the assumption that Section 6386, Revised Statutes of Missouri 1919, is unconstitutional and void.

4. Upon the face of the record and upon the findings of fact by the board the legally required reserve alone, on June 1, 1925, deposited with the State of Missouri, amounted to $1,498,721.00, which was in excess of the total amount of personal property owned by the relator on June 1, 1925, by reason whereof no assessment could be legally made against the relator.

Wherefore, the relator prays for the judgment of this Court ordering that the assessment against the relator, as made by the respondents, be set aside and for naught held, and that the record of said respondents authorizing and [fols. 33-34a] fixing said assessment be quashed and for all other proper relief in the premises.

Jones, Hocker, Sullivan & Angert, Ralph T. Finley,
Attorneys for Relator.

The foregoing is submitted by the relator as and for an abstract of record in this cause.

Jones, Hocker, Sullivan & Angert, Ralph T. Finley,
Attorneys for Relator.

[fol. 35] In Supreme Court of Missouri, en Banc

[Title omitted]

Certiorari

Opinion

Relator is a life insurance company organized under the laws of this State. By this proceeding it seeks to have quashed the record of the Board of Equalization of the City of St. Louis, raising the value of its taxable assets, other than real estate, from $20,778.64 to $50,000. Relator's return of its property for taxation disclosed that its gross personal assets amounted to $448,265.32, consisting of taxable assets in the sum of $354,265.33 and non-taxable assets (United States Bonds) in the sum of $94,000; and that its total liabilities, the legal reserve and unpaid policy claims, aggregated the sum of $333,486.69. Its method of determining the net value of its assets for taxation under

Section 6386, R. S. 1919, as appears from its return, was to deduct from the gross personal assets the aggregate of all liabilities and from that net value deduct the value of its non-taxable assets; in other words, it first took out of its gross assets all non-taxable assets and then from the remaining taxable assets it deducted the whole of its liabilities. The Board of Equalization, being of the opinion that said Section 6386 was unconstitutional, somewhat arbitrarily assessed relator's personal property at $50,000.

Section 6386 relates to the taxation of domestic insurance [fol. 36] companies. With reference to every such company it provides that the next value of all its personal assets, or assets, or values, in excess of the legally required reserve necessary to re-insure its outstanding risks and unpaid policy claims, shall be assessed and taxed as the property of individuals. The Section of course deals only with property which is subject to taxation. The question in this case is: How shall the net value of the taxable assets be determined? Relator claims, inferentially, that it has invested its surplus in United States Bonds, non-taxable assets, and that it has put its legal reserve and working capital into other securities, which are subject to taxation; and that therefore the reserve and all other liabilities should be deducted from the taxable assets alone. But surplus, earnings, undivided profits, etc., are mere bookkeeping terms. The legal reserve is not a segregated fund; it is a measure of liability, a test of solvency; the amount that would be required to make a present settlement with all of relator's policy holders, or to re-insure its risks it is an indebtedness. (State ex rel Missouri State Life Insurance Co. v. Gehner, 8 S. W. (2d) 1068, 1072.) And relator's indebtedness, legal reserve and unpaid policy claims, is a charge against all of its assets, both taxable and non-taxable.

To put the question concretely: relator's non-taxable assets amount to $94,000, its taxable assets to $354,265.33, both are subject to liabilities aggregating $333,486.69—what is the net value of the taxable assets under Section 6386? We know of no more equitable way to determine such value than that of apportioning the total liability between the two classes of assets according to their respective amounts and then deducting from the taxable assets the liability so apportioned to that class. The taxable as-

sets are approximately 79.03 per cent of the gross assets; 79.03 per cent of the aggregate liability is in dollars and [fol. 37] cents $263,554.53; that sum deducted from the gross value in money of the taxable assets leaves $90,710.80, their net value. As this sum is greater than that at which relator's personal property was assessed by the Board of Equalization its record should not be quashed. (State ex rel. American Automobile Insurance Company v. Gehner, 8 S. W., (2d) 1057).

Our writ is accordingly quashed and the proceedings dismissed.

All concur.

William T. Ragland, J.

[fol. 38] In the Supreme Court of Missouri, en Banc

[Title omitted]

Certiorari

Modified Opinion—Filed Mar. 27, 1929

Relator is a life insurance company organized under the laws of this State. By this proceeding it seeks to have quashed the record of the Board of Equalization of the City of St. Louis, raising the value of its taxable assets, other than real estate, from $20,778.64 to $50,000. Relator's return of its property for taxation disclosed that its gross personal assets amounted to $448,265.32, consisting of taxable assets in the sum of $354,265.33 and non-taxable assets (United States Bonds) in the sum of $94,000; and that its total liabilities, the legal reserve and unpaid policy claims, aggregated the sum of $333,486.69. Its method of determining the net value of its assets for taxation under Section 6386, R. S. 1919, as appears from its return, was to deduct from the gross personal assets the aggregate of all liabilities and from that net value deduct the value of its non-taxable assets; in other words, it first took out of its gross assets all non-taxable assets and then from the remaining taxable assets it deducted the whole of its liabili- [fol. 39] ties. The Board of Equalization, being of the opinion that said Section 6386 was unconstitutional, some-

what arbitrarily assessed relator's personal property at $50,000.

Section 6386 relates to the taxation of domestic insurance companies. With reference to every such company it provides that the net value of all its personal assets, or assets, or values, in excess of the legally required reserve necessary to re-insure its outstanding risks and unpaid policy claims, shall be assessed and taxed as the property of individuals. The Section of course deals only with property which is subject to taxation. The question in this case is: How shall the net value of the taxable assets be determined? Relator claims, inferentially, that it has invested its surplus in United States bonds, non-taxable assets, and that it has put its legal reserve and working capital into other securities, which are subject to taxation; and that therefore the reserve and all other liabilities should be deducted from the taxable assets alone. But surplus, earnings, undivided profits, etc., are mere bookkeeping terms. The legal reserve is not a segregated fund; it is a measure of liability, a test of solvency; the amount that would be required to make a present settlement with all of relator's policy holders, or to re-insure its risks; it is an indebtedness. [State ex rel Missouri State Life Insurance Co. v. Gehner, 8 S. W. (2d), 1068, 1072.] And relator's indebtedness, legal reserve and unpaid policy claims, is a charge against all of its assets, both taxable and non-taxable.

To put the question concretely: relator's non-taxable assets amount to $94,000, its taxable assets to $590,265.33 (real, $142,000; personal, $354,265.33), both are subject to liabilities aggregating $333,486.69—what is the net value of the taxable personal assets under Section 6386? We know of no more equitable way to determine such value than that of apportioning the total liability between the two classes of assets (the taxable and the non-taxable) according to their respective amounts and then deducting from the taxable assets the liability so apportioned to that class. The [fol. 40] taxable assets are approximately 84 per cent of the gross assets; 84 per cent of the aggregate liability is in dollars and cents $280,128.81; that sum deducted from the gross value in money of the taxable personal assets ($354,265.33) leaves $74,136.52, their net value. As this

sum is greater than that at which relator's personal property was assessed by the Board of Equalization, its record should not be quashed. [State ex rel American Automobile Insurance Company v. Gehner, 8 S. W. (2d) 1057.] Our writ is accordingly quashed and the proceeding dismissed. All concur.

William T. Ragland, J.

[fol. 41] IN SUPREME COURT OF MISSOURI

No. 27549

STATE OF MISSOURI at the Relation of MISSOURI INSURANCE COMPANY, a Corporation, Relator,

vs.

FREDERICK GEHNER, as Assessor of the City of St. Louis and as President of the Board of Equalization of the City of St. Louis; A. R. Schollmeyer, Clyde Carson, William L. Heckmann, and Joseph J. Lichtenfeld, as Members of the Board of Equalization of the City of St. Louis, Respondents

Certiorari

JUDGMENT—Feb. 11, 1929

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the writ of certiorari heretofore issued herein be, and the same is hereby quashed and for naught held and the proceedings dismissed, and that the said respondents recover against the said relator their costs and charges herein expended and have therefor execution.

(Opinion filed.)

[fols. 42-61] Petition for rehearing, covering 20 pages, filed February 20, 1929, omitted from this print. It was denied by order March 27, 1929.

[fol. 62] IN SUPREME COURT OF MISSOURI

[Title omitted]

ORDER DENYING REHEARING—Mar. 27, 1929

Now, at this day, the Court having seen and fully considered relator's motion for a rehearing, doth order that said motion be and the same is hereby overruled. It is further considered and ordered by the court that the opinion heretofore rendered herein be and the same is hereby modified and the opinion, as modified, be refiled.

[fol. 63] IN SUPREME COURT OF MISSOURI

[Title omitted]

Petition for Appeal, Assignment of Errors, and Prayer for Reversal—Filed June 24, 1929

PETITION FOR APPEAL

The Petition of Missouri Insurance Company, a corporation, respectfully represents:

That the said Missouri Insurance Company is, and was at all times herein mentioned, a life insurance company organized and existing under the laws of the State of Missouri, having its principal office in the City of St. Louis, Missouri, and at all times engaged in such business in said State of Missouri; that the respondent, Frederick Gehner, is and was at all times herein mentioned the duly elected, qualified and acting Assessor of the City of St. Louis, Missouri, and, as such, head of the Assessment Division [fol. 64] established by the Charter of said City, and President of the Board of Equalization of said City, and that the respondents, A. R. Schollmeyer, Clyde Carson, William L. Heckmann and Joseph J. Lichenfeld, with the said Frederick Gehner, composed the Board of Equalization of said City by due appointment of the Mayor thereof; that said Frederick Gehner, as such Assessor, and as President of the Board of Equalization, as aforesaid, is and was at all times herein mentioned the official custodian of all the

records, documents and files of the Assessor's office of the City of St. Louis, and also of the Board of Equalization of said City; that subsequent to June 1, 1925, and as of date June 1, 1925, as required by law, the relator made its tax return in due form to the Assessor of the City of St. Louis, aforesaid, of all of its property for taxation; that in said return, and as a basis for arriving at the taxable value of its property, the relator set down its personal property as follows, to wit:

Money deposited in bank or other safe place		$5,265.33
Bonds, whether State, County, Town, City, Township, incorporated or unincorporated companies, of the value of	$255,000.00	
Government bonds	94,000.00	
		349,000.00
Total personal assets subject to taxation in the State of Missouri		$354,265.33

The relator's said return also showed deductions claimed by it under the provisions of Revised Statutes of Missouri, 1919, Section 6386, as follows:

Amount of legally required reserve necessary to reinsure its outstanding risks on June 1, 1925, deposited with the State of Missouri for the protection of policy holders	$326,522.60
Amount of unpaid policy claims, June 1, 1925.	6,964.00
Total deductions	$333,486.69

[fol. 65] That on the face of said return and the facts therein stated, the net amount of relator's personal property subject to taxation on June 1, 1925, was $20,778.64; that notwithstanding said facts, the respondents, acting as the Board of Equalization of the City of St. Louis, Missouri, did, on March 31, 1926, duly notify the relator of the intention of said Board to assess the relator for personal taxes for the year 1926, on the return of relator as of June 1, 1925, as follows:

Cash deposited in bank or other safe place	$5,260.00
Solvent bonds	349,000.00

and by said notice required the relator to appear before said Board at a time stated, and show cause why such assessment should not be made.

That thereafter, in conformity to said notice, the relator, by its officers and attorneys, appeared before said Board and a hearing was had under said notice; that upon said hearing said Board made its findings in accordance with the facts stated in said return, but said Board also found and determined that, notwithstanding the legally required reserve and unpaid policy claims amounted to $333,486.69, the relator was not entitled to deduct said sum from its assets amounting to $354,265.33, because, in the opinion of said Board, based upon the advice of the City Counsellor of the City of St. Louis, Section 6386 of the Revised Statutes of Missouri, 1919, under which the relator sought to deduct said legal reserve, was unconstitutional and in contravention of Article X, Sections 3, 4, and 7 of the Constitution of the State of Missouri requiring uniformity of [fol. 66] taxation, and said Board thereupon arbitrarily fixed the amount of relator's net taxable personal property at the sum of $50,000.00.

And thereafter the relator in the above entitled cause instituted an original proceeding by certiorari in the Supreme Court of the State of Missouri, in the above entitled cause, and obtained a writ of certiorari against the respondents. In due time said cause came on for hearing before the Supreme Court of the State of Missouri, in banc, and after said Court had in other cases determined that said Section 6386, R. S. of Mo. 1919, was not unconstitutional, and that deductions by life insurance companies, as claimed by the relator, were valid. [State ex rel. Missouri State Life Ins. Co. vs. Gehner, City Assessor, et al., 8 S. W. (2d) 1068; State ex rel. Central States Life Ins. Co. vs. Gehner, City Assessor, et al., 8 S. W. (2d) 1073; State ex rel. Indemnity Co. of America vs. Gehner, City Assessor, et al., 8 S. W. (2d) 1067.]

On consideration of said cause said Supreme Court of Missouri, at the October Term, 1928 of said Court, entered its opinion sustaining the assessment by the respondents in the sum of $50,000.00, not upon the theory that Section 6386, R. S. 1919 was unconstitutional, but on the theory that since the relator owned United States Government bonds in the sum of $94,000.00, and taxable assets in the

sum of $354,265.33, both of which were subject to liabilities (legal reserve) aggregating $333,486.69, the net taxable assets should be determined by apportioning the total liability [fol. 67] (legal reserve) between the two classes of assets, according to their respective amounts, and then deducting from the taxable assets the liability so apportioned to that class, by which calculation the Court computed the net taxable assets of relator as 79.03% of the legal reserve and the value in money of said taxable assets as $90,719.80.

In due time the relator filed its motion for a rehearing in said cause before said Supreme Court. Said cause being an original proceeding in said Supreme Court, said motion for rehearing was in the nature of a motion for new trial. Prior to the handing down of said opinion neither the Board of Equalization nor said Supreme Court by any preliminary or prior ruling had suggested any construction or application of Section 6386 R. S. of Mo. 1919, which would contravene any provisions of the Federal Constitution or statutes or any decisions of the Supreme Court of the United States, so that upon the filing of said motion for rehearing there was presented to the relator its first opportunity to raise the federal questions herein mentioned. In its said opinion the Supreme Court of Missouri for the first time construed said Section 6386 as authorizing the apportionment of the legal reserve of domestic insurance companies between taxable and non-taxable assets, and for that purpose including in relator's gross assets its non-taxable assets (in this case United States Government Bonds to the amount of $94,000.00) in calculating its net taxable assets under said Section 6386.

In its said motion for rehearing, therefore, the relator at the first opportunity set up the following federal ques- [fol. 68] tions, on account of which it attacked said opinion and asked that a rehearing be granted in said cause, to-wit:

1. That said Supreme Court by its opinion refused to permit the relator to deduct the full amount of its reserve because it owned United States Government Bonds in the sum of $94,000.00, whereas domestic insurance companies having no Government Bonds might deduct the full amount of the legal reserve authorized by said Section 6386, and

that by such construction and application of Section 6386 the Court contravened Section 1 of Article XIV of the Amendments to the Constitution of the United States, which provides that no State shall make or enforce any law which shall deprive any person of property without due process of law, or deny to any person the equal protection of the laws. Unled said point of said motion it was contended that the opinion deprived the relator of its property without due process of law because its taxes were increased beyond the plain terms of the statute by the failure to deduct the full amount of its reserve, and that it deprived the relator of the equal protection of the laws because, on account of the mere circumstance that the relator owned exempt securities, a percentage of its reserve was held to be not deductible, whereas other domestic insurance companies having no Government Bonds would be permitted to deduct the full amount of such reserve.

2. That the effect of the opinion is to hold that Section 6386 R. S. of Mo. 1919 authorizes the full deduction of the reserve in case of domestic life insurance companies having no non-taxable assets, but requires that in case of relator [fol. 69] and other companies owning non-taxable securities, only a proportionate part of the reserve may be deducted, thereby rendering said Section 6386 unconstitutional in that it would deprive the relator of its property without due process of law, and would deny to the relator the equal protection of the laws, in violation of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

3. That the method of calculating the relator's net taxable assets by including in its gross assets its Government Bonds resulted in the taxation of a portion of relator's tax-exempt Government securities, under which point the relator cited the following cases:

Farmers Bank vs. Minnesota, 232 U. S. 516;

Northwestern Mutual Life Ins. Co. vs. Wisconsin, 275 U. S. 136;

National Life Ins. Co. vs. United States, 277 U. S. 508;

State ex rel. American Automobile Ins. Co. vs. Schramm, 271 Mo. 223.

4. That the inclusion of the relator's non-taxable assets in its gross assets, for the purpose of determining its net taxable assets under Section 6386, amounted to the taxation of at least a portion of its Government Bonds, in violation of the provision of the Constitution of the United States (Section 8 of Article I) giving Congress power to borrow money on the credit of the United States, on which proposition the relator cited the following cases:

McCulloch vs. Maryland, 4 Wheat. 316;
Weston vs. City Council of Charleston, 2 Pet. 448;
Farmers Bank vs. Minnesota, 232 U. S. 516;
Northwestern Mutual Life Ins. Co. vs. Wisconsin, 275 U. S. 136.

[fol. 70] 5. That the inclusion of relator's non-taxable securities in its gross assets in arriving at its net taxable assets as set forth in the opinion was in direct contravention and in violation of the express provisions of Sections 6481, 6816 and 6825, U. S. Comp. Stat. 1918, denying States and Municipalities power to tax Government Bonds.

The petitioner further states that thereafter, on March 27, 1929, the said Supreme Court duly considered said motion for rehearing and modified its opinion by calculating the taxable assets as 84% of the gross assets and the value in money of such net taxable assets as $74,136.52, and thereupon filed such modified opinion and overruled said motion for rehearing. The pertinent portion of such modified opinion is as follows:

"Section 6386 relates to the taxation of domestic insurance companies. With reference to every such company it provides that the net value of all its personal assets, or assets, or values, in excess of the legally required reserve necessary to re-insure its outstanding risks and unpaid policy claims, shall be assessed and taxed as the property of individuals. The Section of course deals only with property which is subject to taxation. The question in this case is: How shall the net value of the taxable assets be determined? Relator claims, inferentially, that it has invested its surplus in United States Bonds, non-taxable assets, and that it has put its legal reserve and working capital into other securities, which are subject to taxation; and

that therefore the reserve and all other liabilities should be deducted from the taxable assets alone. But surplus, earnings, undivided profits, etc., are mere bookkeeping terms. The legal reserve is not a segregated fund: it is a measure of liability, a test of solvency: the amount that would be required to make a present settlement with all of relator's policyholders, or to re-insure its risks: it is an indebtedness. [State ex rel. Missouri State Life Insurance Co. v. Gehner, 8 S. W. (2d) 1068, 1072.] And relators' indebtedness, legal [fol. 71] reserve and unpaid policy claims, is a charge against all of its assets, both taxable and non-taxable.

"To put the question concretely: relator's non-taxable assets amount to $94,000, its taxable assets to $590,265.33 (real, $142,000; personal, $354,265.33), both are subject to liabilities aggregating $333,486.69—what is the net value of the taxable personal assets under Section 6386? We know of no more equitable way to determine such value than that of apportioning the total liability between the two classes of assets (the taxable and the non-taxable) according to their respective amounts and then deducting from the taxable assets the liability so apportioned to that class. The taxable assets are approximately 84 per cent of the gross assets; 84 per cent of the aggregate liability is in dollars and cents $280,128.81; that sum deducted from the gross value in money of the taxable personal assets ($354,265.33) leaves $74,136.52, their net value. As this sum is greater than that at which relator's personal property was assessed by the Board of Equalization, its record should not be quashed. [State ex rel. American Automobile Insurance Company v. Gehner, 8 S. W. (2d) 1057.] Our writ is accordingly quashed and the proceeding dismissed."

The petitioner further states that on said March 27, 1929 said Supreme Court, upon the filing of said modified opinion, entered its order quashing said writ of certiorari issued in said cause and dismissed said proceeding, which constitutes a final judgment in said cause against which the relator has no further remedy in said Supreme Court of Missouri; and that by its opinion and judgment, aforesaid, and the overruling of relator's said motion for rehearing, said Supreme Court of Missouri necessarily determined the federal questions set forth by relator in its said motion

for rehearing, contrary to the contentions of relator, as aforesaid.

And the petitioner further states that in the aforesaid judgment and proceedings certain errors were committed, to the prejudice of the petitioner, relator in said cause, all of which will more fully appear from the assignment of [fol. 72] errors which is filed herewith.

Wherefore, considering itself aggrieved by the final decision of the Supreme Court of the State of Missouri in the above entitled cause, the relator therein, Missouri Insurance Company, hereby prays that an appeal be allowed herein to the Supreme Court of the United States, and for an order fixing the amount of the bond thereon.

In connection with the foregoing petition for appeal, and with respect to the aforesaid modified and final opinion and judgment of said Supreme Court of Missouri, the petitioner submits the following:

ASSIGNMENTS OF ERROR

I

By its opinion and judgment herein the Supreme Court of Missouri has erroneously construed Section 6386, R. S. of Mo. 1919, as authorizing the apportionment of the legal reserve between the taxable and non-taxable assets of relator, and for that purpose to include in relator's gross assets its Government Bonds in the sum of $94,000.00 for the purpose of calculating the net value of its taxable personal assets, thereby resulting in the taxation of at least a portion of relator's tax-exempt Government Bonds. In so far as the Supreme Court of Missouri so construed and applied Section 6386, said Section is made to authorize the taxation of relator's tax-exempt Government Bonds, in violation of the provision of the Constitution of the United States (Section 8 of Article I) giving Congress power to borrow money on the credit of the United States, as construed by numerous decisions of the Supreme Court of the United States.

[fol. 73]

II

The Supreme Court of Missouri, by its opinion and judgment herein, has held that Section 6386, R. S. of Mo.

1919, authorizes the apportionment of the legal reserve authorized to be deducted by said statute between the taxable and non-taxable assets of domestic insurance companies thereby discriminating against such insurance companies as might own Government Bonds, in contravention of Section 1 of Article XIV of the Amendments to the Constitution of the United States, which provides that no State shall make or enforce any law which shall deprive any person of property without due process of law, or deny to any person the equal protection of the laws. Such construction and application of Section 6386 by the Supreme Court of Missouri deprives relator of its property without due process of law, because its taxes are thereby increased beyond the plain terms of the statute by the failure to deduct the full amount of its reserve by reason of the mere circumstance that it owned Government Bonds, and such action of said Court deprives the relator of the equal protection of the laws because, on account of the mere circumstance that the relator owned exempt securities, a percentage of its reserve is held to be not deductible, whereas other domestic insurance companies having no Government Bonds would be permitted to deduct the full amount of such reserve.

III

The Supreme Court of Missouri erred in including in relator's gross assets its non-taxable securities in calculating [fol. 74] its net taxable assets because such inclusion necessarily resulted in the taxing of at least a portion of relator's Government Bonds in violation of the express provisions of U. S. Revised Statutes, Section 3701, Section 6816, U. S. Comp. Stat. 1918, denying States and Municipalities the power to tax Government Bonds, and contrary to numerous decisions of the Supreme Court of the United States.

IV

For the purpose of calculating relator's net taxable assets, the opinion and judgment of the Supreme Court of Missouri erroneously includes in the relator's gross assets its tax-exempt Government Bonds in the sum of $94,000.00, thereby resulting in the taxation of a portion of relator's said Government Bonds, or at least resulting in an un-

warranted and unlawful discrimination against domestic insurance companies owning Government Bonds, by subjecting relator and other companies owning Government Bonds to greater burdens of taxation upon taxable property because of the ownership of some that is tax exempt.

V

The Supreme Court of Missouri, by its method of calculating the next taxable assets of the relator, diminishes the amount of legal reserve deductible under Section 6386, R. S. of Mo. 1919 and thereby defeats the exemption guaranteed to owners of Government Bonds contrary to U. S. Revised Statutes, Section 3701, U. S. Comp. Stat. 1918, Section 6816, and Section 8, Article I of the Constitution of the United States, and contrary to numerous decisions of the Supreme Court of the United States.

[fol. 75] PRAYER FOR REVERSAL

For which errors the relator, Missouri Insurance Company, prays that the judgment of the Supreme Court of the State of Missouri in the above entitled cause, dated March 27, 1929, be reversed, and a judgment rendered in favor of appellant, State of Missouri at the relation of Missouri Insurance Company, and for costs.

Lou O. Hocker, Frank H. Sullivan, James C. Joue, Jr., James C. Joue, Ralph T. Finley, Counsel for Appellant.

Copy received June 24th, 1929.

Julius T. Muench, Oliver Smith, Counsel for Appellees.

[fol. 75½] [File endorsement omitted.]

[fol. 76] IN SUPREME COURT OF MISSOURI

[Title omitted]

ORDER ALLOWING APPEAL—Filed June 24, 1929.

The appellant in the above entitled cause having prayed for the allowance of an appeal in this cause to the Supreme

Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the State of Missouri on the 27th day of March, 1929, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such cases made and provided;

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of Missouri in the [fol. 77] above entitled cause, as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State of Missouri shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within thirty (30) days of this date.

And it is further ordered that the appeal bond herein, to act as a supersedeas, and for costs on appeal, be fixed in the sum of One Thousand Dollars ($1,000.00).

Dated this 24th day of June, 1929.

J. T. White, Chief Justice of the Supreme Court of the State of Missouri.

[fol. 77½] [File endorsement omitted.]

[fol. 78] Citation, in usual form, showing service on Julius T. Muench et al., filed June 24, 1929, omitted in printing.

[fols. 79 & 80] Supersedeas bond on appeal for $1,000 approved; omitted in printing.

[fol. 81] IN SUPREME COURT OF MISSOURI

[Title omitted]

PRÆCIPE FOR RECORD—Filed June 24, 1929

The Clerk of the Supreme Court of Missouri is hereby directed to prepare and certify a transcript of the record in

the above entitled cause for the use of the Supreme Court of the United States by including therein the following:

1. Order or record showing filing of petition for certiorari in the Supreme Court of Missouri.
2. Notice, petition for certiorari and suggestions in support of petition for certiorari, writ of certiorari and return of service thereon, and stipulated record, and Relator's Abstract of Record.
3. Original opinion of Supreme Court of Missouri.
4. Modified opinion of Supreme Court of Missouri.
5. Judgment of the Supreme Court of Missouri.
6. Entry showing filing of relator's motion for rehearing and relator's motion for rehearing.

[fol. 82] 7. Order of Supreme Court of Missouri overruling relator's motion for rehearing.

8. Petition for appeal, assignment of errors and prayer for reversal.
9. Order allowing appeal.
10. Original citation, with acknowledgment of service thereon.
11. Appeal bond.
12. Præcipe.

James C. Jones, Lou O. Hocker, Frank H. Sullivan, James C. Jones, Jr., Ralph T. Finley, Counsel for Appellant.

Service of copy of the foregoing præcipe is hereby acknowledged on this 24th day of June, 1929.

Julius T. Muench, City Counsellor; Oliver Senti, First Associate City Counsellor, Counsel for Appellees.

[fol. 82½] [File endorsement omitted.]

[fol. 83] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 84] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed July 8, 1929.

Comes now the appellant in the above entitled cause and states that the points upon which it intends to rely in this Court in this case are as follows:

Point 1. That the Supreme Court of Missouri erred in construing Section 6386, Revised Statutes of Missouri, 1919, as authorizing the apportionment of the legal reserve between the taxable and non-taxable assets of the relator, and for that purpose including in relator's gross assets its Government Bonds in the sum of $94,000.00 in calculating the net value of its taxable personal assets, thereby resulting in the taxation of at least a portion of relator's tax-exempt Government Bonds. In so far as the Supreme Court of Missouri so construed and applied said Section 6386, [fol. 85] said Section is made to authorize the taxation of relator's tax-exempt Government Bonds, in violation of the provision of the Constitution of the United States (Section 9 of Article I) giving Congress power to borrow money on the credit of the United States, as construed by numerous decisions of the Supreme Court of the United States.

Point 2. The Supreme Court of Missouri erred in finding and holding that Section 6386, Revised Statutes of Missouri, 1919, authorizes the apportionment of the legal reserve allowed to be deducted by said statute between the taxable and non-taxable assets of domestic insurance companies, thereby discriminating against such insurance companies as might own Government Bonds, in contravention of Section 1 of Article XIV of the Amendments to the Constitution of the United States, which provides that no State shall make or enforce any law which shall deprive any person of property without due process of law, or deny to any person the equal protection of the laws. Such construction and application of Section 6386 by the Supreme Court of Missouri deprives the relator of its property without due process of law, because its taxes are thereby increased beyond the plain terms of the statute by the failure to deduct the full amount of its reserve by reason of the mere circumstance

that it owned Government Bonds, and such action of said Court deprives the relator of the equal protection of the laws because, on account of the mere circumstance that the relator owned exempt securities, a percentage of its reserve is held to be not deductible, whereas other domestic insurance companies having no Government Bonds would be permitted to deduct the full amount of such reserve.

[fol. 86] Point 3. The Supreme Court of Missouri erred in finding and holding that in calculating the net taxable assets of relator under Section 6386, Revised Statutes of Missouri, 1919, relator's non-taxable or exempt securities should be included in its gross assets, because to so hold would in effect result in taxing at least a portion of relator's Government Bonds, in violation of the express provisions of United States Revised Statutes, Section 3701, Section 6816, U. S. Comp. Stat. 1918, denying States and Municipalities the power to tax Government Bonds, and contrary to numerous decisions of the Supreme Court of the United States.

Point 4. For the purpose of calculating the relator's net taxable assets under the provisions of Section 6386, Revised Statutes of Missouri, 1919, the opinion of the Supreme Court of Missouri erroneously includes in the relator's gross assets its tax-exempt Government Bonds in the sum of $94,000.00, thereby resulting in the taxation of a portion of relator's said Government Bonds, and in an unwarranted and unlawful discrimination against domestic insurance companies owning Government Bonds, by subjecting relator and other companies owning Government Bonds to greater burdens of taxation upon taxable property because of the ownership of some that is tax exempt.

Point 5. The Supreme Court of Missouri, by its method of calculating the net taxable assets of the relator, erroneously diminishes the amount of legal reserve deductible under section 6386, Revised Statutes of Missouri, 1919, and indirectly, if not directly, defeats the exemption guaranteed to owners of Government Bonds, contrary to United States [fol. 87] Revised Statutes, Section 3701, U. S. Comp. Stat. 1918, Section 6816, and contrary to the provisions of Section 8 of Article I of the Constitution of the United States,

and numerous decisions of the Supreme Court of the United States.

The appellant further states that only the following parts of the record, as filed in this Court, need be printed by the Clerk for the hearing of the case:

Title of paper	Record page
Clerk's caption of transcript	1
Notice and application for writ of certiorari	1– 7
Writ of certiorari and acceptance of service thereon	10–11
Stipulated record	12–17
Abstract of record for relator	18–34
Original opinion of Supreme Court of Missouri	35–37
Entry of filing of motion for rehearing	41
Relator's motion for rehearing	42–61
Order overruling relator's motion for rehearing	62
Modified opinion of Supreme Court of Missouri	38–40
Judgment	41
Petition for appeal, assignments of error and prayer for reversal	63–75
[fols. 88 & 89] Order allowing appeal	76–77
Citation and entry of appearance thereon	78
Appeal bond	79–80
Præcipe	81–82
Certificate of Clerk of the Supreme Court of Missouri	83

James C. Jones, Lou O. Hocker, Frank H. Sullivan, James C. Jones, Jr., Ralph A. Finley, Counsel for Appellant.

Service of the foregoing statement of points relied upon and designation of parts of the record to be printed is hereby acknowledged on this 5th day of July, 1929.

Julius T. Muench, City Counsellor of the City of St. Louis; Oliver Senti, First Associate City Counsellor of the City of St. Louis, Counsel for Appellees.

[fol. 90] [File endorsement omitted.]

Endorsed on cover: File No. 34,353. Missouri Supreme Court. Term No. 222. State of Missouri at the relation of Missouri Insurance Company, appellant, vs. Frederick Gehner, as Assessor of the City of St. Louis and as President of the Board of Equalization of the City of St. Louis, et al., etc. Filed July 8, 1929. File No. 34,353.